

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the matter of)	
)	
Revision of Procedures Governing Amendments)	MB Docket 05-210
To FM Table of Allotments and Changes)	RM-10960
Of Community of License in the Radio Broadcast)	
Services)	

To: Office of the Secretary
Attention: Chief, Media Bureau

COMMENTS OF VOX COMMUNICATIONS GROUP LLC

Vox Communications Group LLC (“Vox Communications”), by its attorneys, hereby files its Comments in support of the Commission’s Notice of Proposed Rule Making to revise the Commission’s procedures for changing the community of license for commercial AM and FM radio broadcast stations.¹ The *Notice* proposes to streamline the Commission’s processes for commercial AM and FM broadcast stations to change their community of license through the application process instead of the allotment process or filing windows. The proposals would serve the public interest by introducing new and improved service in an expeditious manner versus the present processes, which have proven unwieldy, cumbersome and time consuming. Applicants should be able to file minor modification applications that allow changes to commercial AM and FM radio stations similar to what may be accomplished through the present rule making or filing window process. The proposed changes will conserve the resources of the Commission, applicants and the public while introducing new and improved service more quickly. In support thereof, the following comments are submitted.

¹ *In the Matter of Revision of Procedures Governing Amendments to the FM Table of Allotments and Changes of Community of License in the Radio Broadcast Services*, MB Docket No. 05-210 (rel. June 14, 2005) (the “*Notice*”). This deadline for filing comments in this proceeding is October 3, 2005. *See* 70 Fed. Reg. 44537 (rel. Aug. 3, 2005). Thus, these comments are timely filed.

Introduction

Vox Communications is the licensee of eleven commercial AM and FM radio broadcast stations in medium to small sized markets. The principals of Vox Communications have a quarter century of experience as owners and operators of commercial radio broadcast stations, and considerable experience with the Commission's procedures for amending Section 73.202(b) to change a commercial radio station's community of license.² Vox Communications is thus more than qualified to comment on the proposals contained in the *Notice*.

The Commission's present procedures for changing the community of license for a commercial radio station can delay implementation of new or improved service to the public for several years. The processes can be expensive and fraught with uncertainty. This combination of time, money and uncertainty often deters Commission licensees from proceeding with proposals to change the community of license for a commercial radio station.

Proponents for a change in community of license for a commercial FM radio station must navigate successfully the Commission's rulemaking and application processes. The process begins with the proponent filing a petition for rule making to amend Section 73.202(b) to change the station's community of license. It normally takes the Commission a minimum of four to six months to issue a Notice of Proposed Rule Making ("NPRM") in response to a rule making petition. It can take the FCC another six months or more to issue a decision in response to an unopposed NPRM and years before a decision is issued in a contested proceeding. The average time for the processing of an NPRM therefore ranges from a minimum of one to several years. Upon completion of the rule making process, the petitioner must file an application for construction permit to implement the change in community of license. The processing time for

² See, e.g., *Islamorada, Marathon and Sugarloaf Key, Florida*, 20 FCC Rcd 12117 (Aud. Div. 2005); *Pittsfield and Easthampton, Massachusetts and Malta, New York*, 19 FCC Rcd 23585 (Aud. Div. 2004); *Corinth, Scotia and Hudson Falls, New York*, 16 FCC Rcd 13304 (Alloc. Br. 2001).

an application for construction permit can take up to eight months or more from the release date of the decision adopting the NPRM. It is not uncommon for more than two years to pass before the rule making proponent may implement a proposed change in community of license for a commercial FM radio station in an uncontested proceeding, and significantly longer in a contested proceeding.

The processing time for a change in community of license for a commercial AM broadcast station can take as long. A change in community of license for an AM radio station can occur only through the filing of an application for construction permit. Because the Commission considers a change in community of license for an AM station a major change, the permit application may be submitted only during filing windows opened periodically by the Commission. The applicant can not know when the AM application is submitted during the filing window whether other mutually exclusive applications have been filed, and is subject to chance as to whether their application is a singleton or mutually exclusive with other applications submitted during the filing window. The Commission's rules and policies may even prohibit some mutually exclusive applicants from eliminating mutual exclusivity through the use of a technical solution or change in community of license, even though the applicants could have availed themselves of such a solution were they aware in advance of the mutual exclusivity.

If the permit application is mutually exclusive with other applications submitted during the filing window, the application may be subject to the Commission's auction procedures. The Commission has opened only two such filing windows over the past five years.³ It took almost three years for the FCC to announce the successful winners in the first filing window amongst

³ See Public Notice DA 03-3532 (rel. Nov. 6, 2003) (filing window for Auction 84 opened for January 12 to January 30, 2004); Public Notice DA 99-2585 (rel. Nov. 19, 1999) (filing window for Auction 32 opened for January 24 to January 28, 2000).

the mutually-exclusive applicants.⁴ Twenty months has passed since the FCC closed the second filing window for Auction 84, and no auction amongst the mutually exclusive applicants has yet been held.⁵

Comments

Vox Communications supports the *Notice* insofar as it proposes to streamline the process for changing the community of license of a commercial AM or FM radio broadcast station through the filing of a minor change application instead of the bifurcated rule making and application process for FM radio stations or the filing window process for AM radio stations. The Commission can process a minor modification application requesting a community of license change in approximately 3-6 months, which is significantly quicker than the two years or more it presently takes for the agency to process community of license changes for commercial radio stations. Even if the agency were to incorporate Section 307(b) considerations when considering minor change applications, the processing of these applications would take considerably less time than the Commission's present procedures. Consequently, the use of minor change applications to change a commercial radio station's community of license will expedite new and improved service to the public.

The Commission should treat community of license change applications in a similar fashion to other minor change applications. An application for change in community of license should be entitled to the same cut-off procedures and first-come, first-served protections to

⁴ See Public Notice DA 02-3450 (rel. Dec. 18, 2002) (announcing winning bidders in Auction 32).

⁵ It is not surprising that Auction has not yet commenced, given that more than 800 mutually exclusive applications were filed during the filing window, in addition to any singleton applications. The complexity and daisy chain of some of the mutually exclusive applications probably will delay any auction for a considerable period of time.

which other minor change applications are entitled.⁶ Interested parties have had more than forty years to petition the Commission for changes to the FM Table of Allotments, or to file applications for construction permit for new AM radio broadcast stations. These parties cannot claim at this late a juncture that they have been denied the opportunity to amend the FM Table of Allotments if the Commission decides to process a station's change in community of license as a minor modification application. In addition, the *Notice* does not prevent interested parties from proposing to change the community of license for commercial radio stations through the filing of their own minor change application, and the public could still petition the Commission to allocate vacant FM allotments. Interested parties now would have to be proactive in their allotment requests instead of submitting their requests retroactively in response to a pending rule making petition or application.

The Commission should allow minor change applications to include non-minor changes, including vacant channel substitutions, reference coordinate changes, and involuntary channel changes to existing facilities. To the extent that such changes would be allowed through the filing of a petition for rule making, there is no valid reason to prohibit such changes when filing a minor modification application. A significant number of rule making petitions involve changes in the community of license to more than one radio station in order to maximize the public interest benefits. Indeed, if the Commission prohibited minor change applications to take advantage of the non-minor changes allowed in the rule making process, fewer minor change applications would be filed while the number of rule making petitions filed with the Commission

⁶ Commercial radio stations should be able to file first-come, first-served applications at any time and not be limited to the filing of minor change applications during filing windows, regardless of whether the minor change application is for an AM or FM radio station. In some instances the public interest would be better served by the filing of related applications for AM and FM radio stations. For example, the removal of a sole first local service in one community could be addressed by the filing of a related application to change the community of license of a commercial AM station to that community as a backfill.

would remain same, thus undermining the benefits of the proposed changes spelled out in the *Notice*.

The Commission should allow modification applications and related contingent applications to make the same minor and non-minor changes that would be permitted through a rule making proceeding. The modification application should submit a Section 307(b) showing, be mutually exclusive with the present operations of the radio stations, and in all other matters comply with Commission precedent for amending the FM Table of Allotments. Contingent applications should be related to the initial modification application. The Commission should not require the filing of additional public notice requirements for minor change applications. The Commission presently does not impose public notice requirements upon minor change applications, including one-step applications. Since petitions to deny and counterproposals could not be filed against the minor change application, there is no public interest benefit to imposing public notice requirements.

The Commission should require parties filing a petition for rule making which proposes dropping in a vacant FM allotment to simultaneously file the rule making petition, the Form 301 application, and pay the filing fees for the rule making petition and application. A handful of petitioners have made a cottage industry out of filing rule making petitions, dropping in vacant allotments throughout the country. The rule making petitions are cookie cutter, made simpler by word processing and engineering software. With a little cut and pasting, it is relatively easy for these petitioners to submit hundreds of rule making petitions. As the *Notice* states, an overwhelming majority of these petitioners never participated in the subsequent auction of these vacant allotments. These vacant FM Allotments, however, make it considerably more difficult

for bona fide parties that want to propose changes to the FM Table of Allotments that do serve the public interest.

The payment of a filing fee along with the Form 301 application would deter the filing of these frivolous rule making petitions or counterproposals, resulting in a significant reduction in the number of such applications or pleadings filed with the Commission. In addition to filing their rule making petition, the petitioner would now pay the filing fees and specify coordinates for a new or existing tower site in the minor change application, in addition to the reference coordinates specified in the rule making petition. This level of detail should defer frivolous rule making petitions. Commission resources would not be consumed considering petitions for which genuine interest does not exist, to the detriment of legitimate applications and petitions. Instead, Commission resources could be devoted to processing bona fide rule making petitions and applications.

Vox Communications Group urges the Commission to adopt a procedure for removing non-viable vacant FM Allotments from the FM Table of Allotments. Retention of non-viable vacant FM Allotments do not serve the public interest, and may prevent rule making proposals or minor change applications that would better serve the public interest. Even if only two of the 288 allotments in Auction 37 did not receive initial bids, nonetheless thirty of the Auction 37 allotments did not receive a winning bid, and will be part of Auction 62. Further, as the *Notice* states, a disproportionate number of the drop-in allotment proposals were filed by a relative handful of parties who did not participate in Auction 37, further underscoring the potential non-viability of the allotments. Vox Communications urges the Commission to adopt as part of this proceeding the requirement that if a vacant allotment is unsuccessfully auctioned after two auctions, the Commission would delete the allotment or in the alternative allow the deletion of

the allotment through either a rule making proceeding or as part of a minor change application without providing the public with an opportunity to file an expression of interest for the allotment.

Conclusion

The *Notice* represents a well crafted proposal to streamline the FCC's procedures for changing the community of license for commercial radio stations while balancing public interest concerns. The public interest is advanced because applicants will be required to make a satisfactory Section 307(b) showing with their application. The submission of minor change applications to change a station's community of license instead of cumbersome rule making proceedings or filing windows will expedite new service to the public, while conserving the resources of the Commission, applicants and the public.

WHEREFORE, VOX COMMUNICATIONS GROUP LLC hereby respectfully submits these comments.

Respectfully submitted,

VOX COMMUNICATIONS GROUP LLC

A handwritten signature in blue ink, appearing to read "David G. O'Neil", is written over a horizontal line.

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Its Counsel